

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JABARI BARRY,)
)
Petitioner,)
)
v.) Case No. CIV-19-587-SLP
)
JEORLDR BRAGGS JR.,)
)
Respondent.)

O R D E R

Petitioner Jabari Barry, a state prisoner, filed a Petition for Writ of Habeas Corpus [Doc. No. 1] pursuant to 28 U.S.C. § 2254. Respondent filed a Motion to Dismiss for Failure to Exhaust State Court Remedies [Doc. Nos. 7-8] and Petitioner filed a response. *See* Resp., Doc. No. 10. Before the Court is the Report and Recommendation [Doc. No. 11] (“R. & R.”) issued by U.S. Magistrate Judge Gary M. Purcell pursuant to 28 U.S.C. § 636(b)(1). Judge Purcell recommends that either (i) Petitioner be allowed to amend his Petition [Doc. No. 1] to allege only unexhausted arguments (if he chooses to do so) or (ii) Petitioner’s Petition [Doc. No. 1] be dismissed without prejudice to allow him to exhaust his unexhausted arguments in state court. Petitioner filed an Objection [Doc. No. 12] wherein he does not truly object to Judge Purcell’s R. & R., instead only indicating his choice between the two options recommended by Judge Purcell—Petitioner seeks to file an amended petition. *See* Obj. 1-2, Doc. No. 12.

Both for the reasons stated by Judge Purcell in his R. & R. and due to Petitioner’s failure to lodge any objections to Judge Purcell’s recommendations, the Court concurs with

and adopts the analysis set forth in the R. & R. Petitioner asks for permission to amend his petition to assert only unexhausted arguments, which he will be allowed to do.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 11] is ADOPTED.

IT IS FURTHER ORDERED that Petitioner is granted leave to file an amended petition pursuant to the procedure included in Local Civil Rule 15.1.

IT IS SO ORDERED this 30th day of March, 2020.



SCOTT L. PALK
UNITED STATES DISTRICT JUDGE